

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Appeal No. 16246 of the Georgetown Residents Alliance, pursuant to 11 DCMR 3105 and 3200.2, from the administrative decision of Gladys Hicks, Acting Zoning Administrator, Building and Land Regulation Administration, Department of Consumer and Regulatory Affairs made on January 16, 1997, to the effect that approving an application for renovation to Poulton Hall for a child care center does not require approval from the Board of Zoning Adjustment for the facility in an R-3 District at premises 1421 37th Street, N.W. and 3610-12 P Street, NW. (Square 1248, Lots 161, 162 and 835).

HEARING DATE: July 16, 1997
DECISION DATE: October 1, 1997

ORDER

INTRODUCTION:

1. The appeal was filed by the Georgetown Residents Alliance, hereinafter referred to as the Appellant.
2. The appeal challenges the administrative decision of the Acting Zoning Administrator of the Department of Consumer and Regulatory Affairs (DCRA), made on January 16, 1997, to the effect that approving an application for renovation to Poulton Hall for a child development center does not require approval from the Board of Zoning Adjustment.
3. Georgetown University (the University or Intervenor) is the owner of property at 1421 37th Street, NW and 3610-12 P Street, NW (the site or subject property), and intervened in the appeal. At the public hearing on the appeal, the Board of Zoning Adjustment (the Board or BZA) recognized Georgetown University as an Intervenor to the appeal.
4. The other participant in the appeal was the Acting Zoning Administrator for the District of Columbia. Advisory Neighborhood Commission (ANC) 2E did not submit a written report, or presented testimony; accordingly, the ANC is not a party to the appeal.
5. A motion to dismiss the case was filed by the Intervenor who argued three bases for dismissal of the appeal: (1) the appeal was not filed timely; (2) laches; and, (3) equitable estoppel.

Timeliness

6. The University indicated that the appeal should have been filed much sooner by the Appellant to preserve their rights. The University proceeded with plans for the project based on confirmed information from the Acting Zoning Administrator. In addition, public meetings attended by community residents were held on the project.

7. The University stated that by May 1996, Advisory Neighborhood Commission 2E and the Georgetown Residents Alliance were informed that the project would be going forward because the Acting Zoning Administrator had determined that the child development center was an accessory use; therefore, it did not require Board review.

8. On August 6, 1996, two building permits were issued for work on Lots 161 and 162. Subsequently, DCRA issued revised permits showing the correct address for Lots 161 and 162. The revised permits were issued on August 28, 1996.

9. In an effort to overturn the decision of the Acting Zoning Administrator, Appellant met with representatives of the Department of Consumer and Regulatory Affairs (DCRA) on August 19, 1996. Appellant indicated that at the end of the meeting, that the Director of DCRA orally instructed his staff not to process the permits until the Corporation Counsel made a determination about the project's legal issues.

10. Appellant by letter dated August 20, 1996 informed the Corporation Council that the permits were incorrect and that the wrong address was shown on the permits. Appellant asked for the intervention of the Corporation Counsel, and requested that DCRA immediately cease processing the applications and return them to the University.

11. In September of 1996, a permit was issued to permit interior demolition to Poulton Hall. On the permit application, it was stated that the proposed use of the facility would be a child development center, along with University mixed uses.

12. On December 27, 1996, the Director of DCRA responded to Appellant's August 20, 1996 letter. The Appellant was advised that after consultation with the Corporation Counsel, the Acting Zoning Administrator and reviewing the concerns of all parties involved, DCRA made the decision to issue alteration and repair permits for the proposed child development center. The Appellant was advised that this decision could be appealed to the Board of Zoning Adjustment.

13. Thereafter, on January 16, 1997, the Acting Zoning Administrator approved the amended applications and the building permits were issued on January 31, 1997. Appellant's appeal was filed on March 12, 1997.

14. The Board indicated that the appeal was timely filed. The reasons were: (a) Appellant attempted to work through DCRA before the permit was issued; (b) Appellant had to wait for DCRA/Corporation Council's decision prior to filing the appeal; (c) the appeal was filed less than three months after notification from DCRA that the permits were to be released.

Latches

15. The Intervenor argued that under the equitable doctrine of latches, Appellant is barred from taking an appeal. The University indicated that it incurred significant expense in developing its plans for the child development facility between the time the Acting Zoning Administrator made a decision, the time the decision was made known to the Appellant, and the filing of the appeal. The University proceeded with full construction drawings and in hiring teachers and staff needed to open the facility in September 1997. Given the substantial reliance by the University on the Acting Zoning Administrator's decision and the lack of any justifiable reason for Appellant's delay, the appeal should be dismissed under the doctrine of laches.

16. Appellant stated that the community was required to exhaust all of the administrative remedies before filing the appeal, and that was done. The community residents were unaware that building permits had been issued for the project, until a freedom of information request was filed. Further, the University knew that the community had major concerns about the project, but proceeded with construction of the child development center.

17. The Board determined that the Intervenor had not made the case barring the appeal on the basis of latches.

Estoppel

18. Intervenor argued that the appeal is barred by the doctrine of equitable estoppel. The elements necessary for estoppel are a party: (a) acting in good faith; (b) on affirmative acts of a municipal corporation; (c) makes expensive and permanent improvements in reliance thereon; and (d) the equities strongly favor the party invoking the doctrine. The University testified that it acted in good faith on the affirmative acts of the City, that it made expensive and permanent improvements, and that reliance by it was justifiable because the person who approved the building permits was the properly empowered administrative official to make such a decision.

19. Appellant argued that there was no issue with respect to estoppel. Appellant testified that not until the building permit was issued on January 31, 1997 did it have a basis on which to file the appeal. Prior to that time, Appellant was exhausting its administrative remedies by pursuing reversal of the Zoning Administrator's decision with the Office of Corporation Counsel. Appellant further argued that it made known to the University its opposition. The University did not act in good faith in relying on the District of Columbia government when it knew the opposition of the Georgetown Residents Alliance.

20. Appellant indicated that Georgetown University knew that the community had major concerns with the project, and that it was highly visible. Accordingly, good faith was not exercised when the University started construction. The expenses that were borne by the University were of its own deliberate choice.

21. The Board determined that the Intervenor had not made the case for barring the appeal on the basis of estoppel.

SUMMARY OF EVIDENCE:

22. The Appellant raised a number of issues, which it asserted constituted error on the part of the Acting Zoning Administrator and which were the bases on which it argued that the decision should have been revoked and the matter initially forwarded to the BZA.

a. A Child Development Center On Land Zoned R-3 Needs BZA Approval

Appellant argued that all child development centers in an R-3 zone are required to obtain the approval of the BZA. Examples cited of other child development centers in the neighborhood include St. Johns Church, Little Folks and Georgetown Montessori.

Section 205 of the Zoning Regulations states that if a child development center is located in an R-1 District (to include the R-3 District), the Board must review it under the Special Exceptions provision. The argument by the University that the child development center would be an accessory use and therefore does not require a hearing is unacceptable.

b. If A Child Development Center Is Not A Part Of An Approved Campus Plan, BZA Approval Is Needed

The University, like any other property owner, is required to comply with the applicable provisions of the Zoning Regulations, including Section 205 regarding child development centers in residential zones. The campus plan did not relieve the University of any duty to comply with the existing zoning laws as the Acting Zoning Administrator found, but merely imposed additional requirements, procedures and conditions within the boundaries of the campus plan.

A BZA hearing is required, if any changes are to be made to the campus plan. All of the physical activities to be undertaken by Georgetown University must be outlined in the campus plan. Specifically, the plan states that the use of Poulton Hall would remain unchanged from its current use. In the plan, Poulton Hall would be used for educational, developmental, print shop, theater, and post office; and, the future use is listed as unchanged. Upon review of the approved plan, there is no mention of a child development center. To establish a child development center at the site would be a change from what was approved by the Board in the 1989 Campus Plan.

The campus plan identifies 3610 and 3612 P Street (lots 161 and 162) as containing green space. (Thee two properties previously occupied townhouses that were destroyed in a fire.) BZA Order No. 15005 states that the properties would accommodate student/faculty townhouses. Without the Board's approval, Georgetown University is using a portion of the green space for the child development center. A dumpster pad, a shed, a fence, and playground equipment are located on the lots.

The neighbors who participated in the campus planning process did so in good faith and anticipate that Georgetown University would follow the plan.

c. The Permit Issued For The Child Development Center Was Based On A Voided Application

The Acting Zoning Administrator signed a voided building permit application. Georgetown University filed a building permit application with the Department of Consumer and Regulatory Affairs (DCRA) for a child development center to be located at 1421 37th Street, NW on Lots 835, 161 and 162. DCRA cannot issue a building permit for three lots; accordingly, the University crossed off the three lots and replaced them with Lot 162. By so doing, the University created several problems:

- First, on the top of all building permit applications it states that erasing, crossing and whiting out, or otherwise altering any entered information will void the application. Georgetown University voided their application by crossing out the three lots.
- Second, the University crossed out the three lots and replaced them with Lot 162. However, Lot 162 is not located at 1421 37th Street, rather at 3612 P Street.
- Third, the University changed the date of the application from June 26, 1996 to August 6, 1996.

The community residents met with the Director of DCRA to inform him of substantive and procedural problems with the building permit application on August 19, 1996. Appellant indicated that at that point they were unaware that any permits had been issued for the child development center. The Director informed the residents that he would require the head of the permit processing section to correct the flaws; and, zoning approval would not be issued for the child development center until the matter was thoroughly reviewed. The Director then asked the residents to submit their findings in writing.

By correspondence dated December 27, 1996, the Director of DCRA informed the Appellant that after consultation with his staff and the Corporation Counsel, a decision was made to issue the alteration and repair permits for the proposed child development center. Appellant stated that by so doing, DCRA erred signing the zoning approval of the project.

23. The Appellant presented three witnesses. Ms. Beverly Jost testified as to the history of the ANC actions on the case. Ms. Barbara Zartman testified that, on August 19, 1996, Appellant met with the Acting Zoning Administrator and knew of her ruling on the accessory use issue. Ms. Fran Goodwin testified that, in order to protect adjacent property owners, a public hearing before the Board of Zoning was required in order to evaluate the impacts of the child development center.

24. There were other community groups and individuals that wanted to be affiliated with the Appellant's case. The Board indicated that the groups and individuals could not intervene based on Subsection 3315.12 of the Zoning Regulations. The Board, however, accepted the correspondences that were submitted by the various entities as evidence of the community's sentiment on the issues, and in support of Georgetown Residents Alliance.

25. The Acting Zoning Administrator testified that the proposed child care center is a permitted accessory use, and that it does not require Special Exception zoning relief. It was determined that the child development center could be located in Poulton Hall because the building was identified in the school's campus plan as containing institutional/educational support services. This position was reiterated at each meeting attended with community residents and personnel within DCRA. The Appellant, however, refused to accept the decision of the Zoning Administrator's office.

26. There was a request for the Corporation Council's office to review the facts pertaining to the child development center. On August 28, 1996, the Director of DCRA, the Acting Zoning Administrator and the Corporation Council met to discuss all of the issues. The Corporation Council indicated, in the meeting, that the building permit applications were sloppily filled out; however, no fraud had occurred. The incorrect building permit applications were voided and corrected copies were requested. New building permits were issued for lots 161 and 162.

27. The Acting Zoning Administrator testified that a building permit was issued for alteration and repair work to the interior of Poulton Hall, not for new construction. Changing a use within the confines of an existing building is considered alteration and repair, not new construction. Georgetown University proposed to put on the vacant lots a shed, a fence, a dumpster pad, and playground equipment. These uses are considered to be accessory to a child development center, not principal uses. The vacant lots are located at 3610 P Street, NW (Lot 161) and 3612 P Street, NW (Lot 162).

28. Building permits were issued for Lots 161 and 162, after the Director of DCRA informed the Appellant that permits would not be issued until the project was thoroughly reviewed. It is, however, important to note that the issued building permits were for fences and a shed. That type of permit is for matter-of-right use in any zone district. The building permit for the alteration and repair work on the interior of Poulton Hall was not issued until January 1997, after the Director of DCRA informed the Appellant on December 27, 1996.

29. In 1989, under Order No. 15005, the Board approved Georgetown's request to use Lots 161 and 162 to construct two single-family dwelling units. The buildings were never constructed. The order expired because the University did not apply for a certificate of occupancy within six months.

30. The Zoning Regulations define accessory use as "a use customarily incidental and subordinate to the principal use, and located on the same lot with the principal use." The Acting Zoning Administrator indicated that within the confines of a campus plan an accessory structure does not necessarily have to be on the same lot as the principal structure.

31. The Acting Zoning Administrator testified that there were technical deficiencies in the filing of the initial applications, which were cured by the refile of corrected permit applications.

32. The Acting Zoning Administrator indicated that the interpretation of her office has been that child development centers, which serve universities, are oftentimes considered to be an educational facility. In many instances, these facilities are directly related to a university because they are used to train elementary education teachers. However, in other instances, the child development centers may not directly address the post-secondary educational mission of a university. This interpretation has applied to child development centers on college campus throughout the city.

33. The Acting Zoning Administrator testified that so long as the child development facility was limited to University children, no additional zoning review or zoning action is required. The child care facility for a university is distinguished from other child development centers which are regulated by the Special Exceptions provision of the Zoning Regulations.

34. Child development centers that are located in mixed-use buildings (such as an office building) are considered to be accessory, if they are used exclusively for employees. If, however, the child development centers are open to the general public, they are considered to be a principal use. Principal uses that do not meet the zoning requirements are referred to the BZA. All child development centers must have a license and a certificate-of-occupancy.

35. The Board raised concerns about what appeared to be defects in the building permit applications for Lots 161 and 162. The Board also inquired why there were three building permits applied for by Georgetown University with the wrong lot numbers and wrong uses considering the due diligence the University showed in meeting early with the Zoning Administrator to obtain the city's approval, in writing, of the project.

36. At the request of the Board, the Zoning Administrator's Office filed a post-hearing submission giving background of the permit applications and copies of all materials that had been filed, including the following building permits that were issued in 1996:

Permit Number	Date Issued	Proposed Use
B403119	August 6, 1996	Fence
B403118	August 6, 1996	Fence
B403568	August 28, 1996	Fence and Shed
B403569	August 28, 1996	Miscellaneous Revision
B404132	Sept. 26, 1996	Interior Demolition
B404261	Oct. 2, 1996	Interior Renovation for an Office (1 st Floor)

On January 31, 1997, DCRA issued Building Permit No. B406311 to the University for renovations to Poulton Hall and establishment of the child development center.

37. The Intervenor testified that Poulton Hall, located at 1421 37th Street, on the southeast corner of the intersection of 37th and P Streets, N.W., was erected in 1947 and has been in continuous use by the University since that time. It was first used for classrooms and the college bookstore. It has subsequently come to house such uses as the Hoya Station Post Office, the central computer facility, the Mask & Bauble Theater and the printing and graphics departments. A Certificate of Occupancy, Number B4020, was issued in 1957 for a paint shop and offices. A subsequent Certificate of Occupancy, Number B62277, was issued in 1967 for a drama department, printing department, University classrooms and offices.

38. The Intervenor stated that the site has been included within the boundaries of the campus plan for many years. The BZA approved campus plans in 1977 (Order No 10814), 1983 (Order No 14021), and 1990 (Order No. 15302), all of which included the subject property. The most recent campus plan included the property in the category of "Mixed use main campus education/educational support."

39. Several years ago, the University determined that it needed to provide a child development center to meet the needs of its students, faculty and staff. The University determined to use first floor space in Poulton Hall for the child development center. In October of 1995, University representatives met with the Acting Zoning Administrator to discuss construction of the proposed child development center. After reviewing the University's plans for the project, as well as the approved 1989 campus plan, the Acting Zoning Administrator advised the University that it could proceed with development, as a matter-of-right, without review or approval from the BZA.

40. The University stated that by letter dated November 7, 1995, the Zoning Administrator confirmed to Georgetown University that the University's proposed use of Poulton Hall as a child development center was an accessory use pursuant to Section 202 of the Zoning Regulations and did not require BZA review and approval.

41. In April of 1996, the University filed permit applications with DCRA for renovations of Poulton Hall. On April 18, 1996, the applications were forwarded to the Old Georgetown Board (OGB) and to the Commission of Fine Arts (CFA) for review. Public hearings were held before the OGB and the CFA in May and June of 1996. The OGB approved the center in July of 1996 and the CFA approved the plans in August of 1996. On September 5, 1996, the University's agent filed a corrected permit application curing certain technical deficiencies, which had been identified. On January 31, 1997, the final building permit was issued for construction of the child development center. The subject appeal was filed on March 12, 1997.

42. The University's land planner testified that, even though the subject child care center will be licensed by the District of Columbia as a child development center, for zoning purposes it is part of a college or university use. The center will be operated exclusively for children of students, faculty and staff of the University. It will also be used as a laboratory teaching program as part of the University. It is part of the total program offered by the University and accordingly it is permitted as a University use subject to the restrictions and permissions granted to the University. The Land Planner testified that, in that respect, it is no different than the University's bookstore, dormitories, offices, theaters, libraries, laboratories or athletic fields. None of these uses would be permitted in an R-3 District unless they were part of some other permitted use, in this case, a university use.

43. The University's land planner testified that offering the services of a child care center is commonplace in colleges or universities both in the District of Columbia and nationwide. In the District, Catholic University, American University, Howard University and Trinity College already have such programs on their campuses, all of which are located in residential zones, and all of which have been permitted as a matter-of-right. Across the United States, more than 870 college and universities include child development centers for students and employees. The statistic demonstrates that child care services have become customary family services in large institutions. Other institutional uses, such as hospitals and international organizations, and large corporate settings also include child development centers on site.

44. The University's land planner testified that Poulton Hall is already devoted to a University use. Its renovation for use as a University child care center does not constitute a change in that use for zoning purposes. Georgetown University and other universities in the District have routinely reallocated and changed uses in existing buildings without BZA approval, as long as the uses fit generally within the category of "university use." The use of Poulton Hall itself has changed over time from classroom use to the mix of support uses now in the building.

45. The land planner testified that BZA approval would be required for construction of a new building, or an addition to an existing building, or for occupancy of an existing building not now devoted to university use and not included in the campus plan. None of those conditions apply to the occupancy of Poulton Hall by the child development center.

46. The University's land planner presented evidence that because Poulton Hall is located on an assessment and taxation lot does not preclude its use as a child care center. The Zoning Regulations require a lot of record only for the proposed construction or conversion of a principal structure or for any addition to a principal structure.

47. The land planner testified that the location of the child development center in Poulton Hall is consistent with the approved campus plan. That plan contains a category for "mixed use main campus education/educational support" and that the primary uses of Poulton Hall now are educational support. The land planner testified that the proposed child development center fits more closely into that category than into any other and that the use is consistent with the campus plan. It was pointed out that the campus plan, as approved by the Board, includes flexibility to accommodate future needs of the University.

48. The campus plan identifies seven categories on the "Future Land Use" map. Those categories are:

- Mixed Use/Hospital Medical Education/Educational Support,
- Hospital Zone;
- Mixed Use Main Campus Education/Educational Support;
- Student Residences Zones West of 37th Street;
- Mixed Use/Athletic/Recreation/Green Space on Top Main Campus Education/Educational Support;
- Educational Support Central Utility Plant; and,
- Existing Commercial C-1

49. The University stated that based on the campus plan, the most appropriate land use category where a child care center could be located is under the designation Mixed Use Main Campus Education/Educational Support. As such, the child care center is consistent with the categories of the campus plan.

50. Georgetown University acknowledged that one of its land use maps was mislabeled, thus causing some confusion. Specifically, on one map Lots 161 and 162 are blank (indicating no use). However, on another map the existing use is student/faculty/staff residences and the future use is faculty/staff/graduate student residences.

51. The land planner testified that the use of the adjoining open space to the east for a play area does not involve the construction of any additional buildings and that the play equipment there is merely an adjunct to the permitted use. The placement of that equipment requires no approval that would go beyond that required for other structures (such as fences, retaining walls, flagpoles and benches). The use of Poulton Hall involves an existing building with no additional floor area, no BZA review and approval is required.

52. The Intervenor filed a supplemental motion on August 11, 1997 to clarify the scope of the appeal and to dismiss the appeal as to Lots 161 and 162. The Intervenor argued that the Board had no jurisdiction with respect to Lots 161 and 162. The Intervenor stated that since no appeal had been taken from the issuance of the August building permits for Lots 161 and 162, those building permits are not before the Board, and the Board has no jurisdiction. The Intervenor further argued that any appeal from those building permits is barred by Appellant's failure to take a timely appeal.

53. The Intervenor stated that the facts of record demonstrate that on August 6, 1996 two building permits were issued for work on Lots 161 and 162. The Appellant knew of these permits when they met with the Acting Zoning Administrator and the Director of DCRA on August 19, 1996. Appellant wrote Corporation Counsel that these permits were incorrect and that the wrong address was shown on the permits. Subsequently, DCRA issued revised permits showing the correct address for Lots 161 and 162. Revised permits were issued on August 28, 1996, and became final and appealable on that date.

54. The Intervenor argued that the issuance of the August permits for Lots 161 and 162 was not a tentative or preliminary decision, but final approval of the building permits for Lots 161 and 162. Intervenor stated that the appeal as to these permits became "ripe" for appellate review by the Board on that date.

55. The Intervenor stated that the Appellant is attempting to use its appeal of the January 31, 1997 building permit for Lot 835 as a way of bringing in an appeal of the August 1996 building permits for Lots 161 and 162.

56. The Intervenor argued that were Appellant to maintain that its March filing of an appeal did include Lots 161 and 162, the appeal should be dismissed as untimely. The Appellant knew in August 1996 that the city had already issued the building permits for Lots 161 and 162. The Intervenor stated that since the Appellant waited until March 1977 to take an appeal of that decision (seven months later) its appeal is untimely.

57. The Intervenor stated that the subject case is not establishing precedent as argued by the Appellant, rather is following precedent. Since 1984, there have been consistent administrative rulings by the City's Zoning Administrator and the Board that child development centers on university campuses that are restricted to children of faculty, staff and students are permitted, without additional review by the Board. Other college campuses in the City where this precedent exists are American University, Trinity College and Catholic University.

58. Mr. Craig Davidian, ANC Commissioner, testified as part of Intervenor's case. He described the many meetings between the ANC and Georgetown University and the University's offers to sit down with the community and agree to conditions on the use. Mr. Davidian further testified that, by August of 1996, the ANC and the larger community knew that the permits had been issued and that the Acting Zoning Administrator had made her decision.

59. Thirteen letters were filed in support of the child development center and requesting dismissal of the appeal. The letters stated that the Intervenor had gone to great lengths to inform all residents of the child development center, that the Intervenor had appeared before the ANC three times and had even gone door-to-door to inform the community. The letters stated that Intervenor should not be singled out when other universities have been permitted to establish child development centers on their campuses as a matter-of-right. Many of the letters stated that only a small minority of individuals objected to the project, and those individuals oppose nearly everything related to the Georgetown University. Many of the letters said that Appellant does not speak for all of the Georgetown communities.

60. At the conclusion of the public hearing, a decision date was set for the September 3, 1997 public meeting. This decision date was rescheduled to October 1, 1997 to permit all Board members who heard the case to participate in the discussion. The appeal was decided at that time and the Board granted the motion of the Intervenor to clarify the scope of the appeal and to dismiss the appeal as to Lots 161 and 162. The Board indicated that the appeal only concerned the building permit for Lot 835 that was issued on January 31, 1997.

FINDINGS OF FACT:

Based on the evidence of record, the Board finds as follows:

1. That the use of the subject property as a child development center is permitted consistent with the existing University use of the site as part of the campus plan approval for Georgetown University.
2. Since the proposed use is intended to serve students, faculty and staff of the University, as well as to support the teaching mission of the University, it is a proper University function and does not come within the normal zoning restrictions for a child development center in an R-3 District.
3. The child development center would be used exclusively by students, faculty and personnel associated with the University. As such, the facility can be located in Poulton Hall and does not have to be approved under the Special Exceptions provisions of Section 205 of the Zoning Regulations because it would be an accessory use to the University.

4. The Acting Zoning Administrator properly found that the use is to occupy an existing building within the campus plan already devoted to University uses, that the child development center did not constitute a change in that use, and that the use did not require construction of a new building or an addition to an existing building which limits its use or prevents it from being used for a University child development center.

5. The Acting Zoning Administrator made her decision based on the precedent established by the Board and prior Zoning Administrators. Institutions of higher learning that have established child development centers within the confines of their campus plans are Catholic University, Howard University, American University and Trinity College.

6. Seven different building permits were released for three different lots in connection to the child care center. Although there is an interrelationship between all of the permits, each has to stand on its own. Releasing each permit is a separate decision, and each could be appealed to the Board. Accordingly, the Board limited the scope of the appeal specifically to whether the Acting Zoning Administrator erred in making a determination on January 16, 1997 that a building permit could be issued for the renovation of Poulton Hall for a child development center without the approval of the Board of Zoning Adjustment.

7. The use of the adjoining open space to the east for play area is not before the Board as permits for the use of lots 161 and 162 are not on appeal. Accordingly, the Board grants Intervenor's motion to clarify the scope of the appeal and to dismiss the appeal as to lots 161 and 162. The Board notes, however, that this use does not involve the construction of any additional buildings and that the play equipment is an adjunct to the permitted use. Thus, BZA approval is not required for that play equipment and accessory use.

8. The building permits that were issued for Lots 161 and 162 are for accessory uses. Accessory uses are permitted as a matter-of-right on residentially zoned land; they are not referred to the Board. The uses proposed for Lots 161 and 162 (a shed, a fence, a dumpster and playground equipment) are accessory uses.

9. The use of Poulton Hall (Lot 835) as a child development center would not be inconsistent with the land use designation identified in Georgetown University's Campus Plan. The land use map identify the building as being used for mixed-use, education/educational support. The use of a portion of Poulton Hall to house a child development center is appropriate under the above-mentioned land use category.

10. Campus plan land use designations are general in nature; they are not site specific. When the Board reviews campus plans, every effort is made to have the plans identify specific uses and the future needs of the universities. Campus plans generally have a 20-year timeframe. Therefore, the Zoning Administrator has to make a determination about a proposed use on a campus based on several factors including the school's land use map, the campus plan, previous BZA orders, and the site's history.

CONCLUSIONS OF LAW AND OPINION:

Based on the foregoing summary of evidence and findings of fact, the Board concludes that the decision of the Zoning Administrator must be upheld. The Board concludes that the Acting Zoning Administrator properly based the decision on the corrected building permit application and on information available in the campus plan.

The Board concludes that the evidence did not support appellant's arguments that the child development center should be reviewed under Section 205 of the Zoning Regulations. The facility is an accessory use and therefore permitted as identified in the campus plan. Numerous child development centers are located on university campuses throughout the city. These facilities have been approved by the Zoning Administrator's office because they are accessory uses to the universities. The Board agrees with Georgetown University that the school is not setting precedence, rather following precedence that has been previously set.

The Board concludes that Georgetown University did not need to amend its campus plan to establish the child development center in Poulton Hall. Although the campus plan did not specifically identify the child development center, it was found to be an accessory use that the University would use exclusively for students, faculty and staff. As such, it is permitted under the land use category of education/educational support.

The Board concludes that the Georgetown Residents Alliance has failed to present evidence to the Board which indicates that the Acting Zoning Administrator failed to properly interpret the provisions of the Zoning Regulations, or that an error was made in the administrative decision of the Acting Zoning Administrator on January 16, 1997 in issuing the subject building permit. Accordingly, it is hereby **ORDERED** that the appeal is **DENIED** and that the decision of the Acting Zoning Administrator in issuing Building Permit No. B406311 is hereby **UPHELD**.

VOTE: 4 to 1

(Maybelle Taylor Bennett, Susan Morgan Hinton, Sheila Cross Reid and Laura Richards to **DENY**; Betty King abstaining.)

The proposed order was sent out for exceptions by correspondence dated September 3, 1998. The Appellant (Georgetown Residents Alliance) and the Intervenor (Georgetown University) filed exceptions. The Board considered the proposed order and the exceptions at its public meetings of October 7 and November 4, 1998.

On October 7, 1998 the Board **ADOPTED** the order, and instructed staff to review the exceptions filed by Georgetown University and **AMEND** the order, if appropriate, accordingly. The Board **CONFIRMED ADOPTION** of the order on November 4, 1998.

THIS ORDER WAS ADOPTED, AS AMENDED, BY THE BOARD OF ZONING ADJUSTMENT AT ITS PUBLIC MEETINGS OF OCTOBER 7 AND NOVEMBER 4, 1998.

VOTE: 3 to 0 (Sheila Cross Reid, Betty King and Jerry H. Gilreath to adopt.)

BY ORDER OF THE BOARD OF ZONING ADJUSTMENT

ATTESTED BY: Tracey H. Rose
for **SHERI M. PRUITT-WILLIAMS**
Interim Director

FINAL DATE OF ORDER: DEC - 1 1998

UNDER 11 DCMR 3103. 1, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT."

Ord16246/BAB/11.17.98

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



BZA APPEAL NO. 16246

As Interim Director of the Office of Zoning, I certify and attest that on DEC - 1 1987
a copy of the order entered on that date in this matter was mailed first class postage prepaid to
each party who participated in the public hearing and who is listed below:

Don W. Crockett, Chairman
Georgetown Residents Alliance
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DATE: DEC - 1 1987